IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1284 of 2005
In
SPECIAL CIVIL APPLICATION No. 12626 of 2002
With
LETTERS PATENT APPEAL No. 1285 of 2005
To
LETTERS PATENT APPEAL No. 1345 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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REPRESENTED BY GUJARAT WORKING WOMEN ASSO. - Appellant(s)

Versus

VADODARA MUNICIPAL CORPORATION - Respondent(s)

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Appearance :
PARTY-IN-PERSON for Appellant(s) : 1,
None for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 14/10/2005

COMMON ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

All these appeals are admitted. Mr. Pranav Desai

waives service for the respondent. At the joint request of the learned counsel for the parties, all these appeals are taken up for final hearing and disposed of by this common order.

2. All these appeals arise out of the common judgment and order dated 3rd August, 2004 passed by Miss R.M. Doshit, J. dismissing Special Civil Application No.12626 of 2002 and allied matters.

3. Initially, Mrs. Jayshree Rameshchandra Biniwale addressed the court in person on her behalf and on behalf of other appellants as their power of attorney for a considerable time. Thereafter, senior advocate Shri R.G. Biniwale from Baroda requested the court to permit him to assist the court in this matter as according to him, Mrs. Biniwale, who was appearing as party-in-person, was not in a position to properly explain the matter. We have not acceded to his request.

4. All the appellants – original petitioners were the erstwhile employees of the respondent – Corporation working in its Electricity Department. At the relevant point of time, the Corporation was having a licence under

the Indian Electricity Act, 1910. By a Government Notification dated 5th March, 1988, its licence came to be revoked and the Electricity Undertaking was taken over by the Gujarat Electricity Board (G.E.B.). After taking over the Electricity Undertaking of the Corporation by the G.E.B., the employees working in the Electricity Department were rendered surplus. A tripartite agreement dated 6th May, 1988 was entered into between the respondent – Corporation, the Union of the Electricity Corporation and the G.E.B. As per the agreement, the G.E.B. agreed to absorb large number of employees in the said Electricity Department which include the present appellants – original petitioners. They have agreed to accept a lumpsum amount in lieu of loss of future pension and accordingly, they were also paid the lumpsum amount in lieu of future loss of pension which was accepted by them under the said agreement. As per the Resolution dated 22nd October, 1994, it was termed as “commutation of pension”. Relying on this phrase, the appellants made a demand that what was paid under the agreement was the commuted value of pension for a period of 12 years which expired in the year 2000 and thereafter, they were entitled to receive regular monthly pension. It was not paid to them, therefore, by way of writ petitions, they

approached this court in 2002, 2003, 2004 respectively. After hearing the learned counsel for the parties, the learned Single Judge of this court was of the opinion that the demand made by the petitioner was too tall. She has also observed in her common order dated 3rd August, 2004 that a lumpsum amount in lieu of future loss of pension was agreed upon under the agreement dated 6th May, 1988. Be it is called “lumpsum payment” or “lumpsum pension” or “commutation of pension” is one and the same as it was intended to be the full and final settlement of the claim of the employees governed by the said agreement. The learned Single Judge was also of the view that having once accepted the lumpsum amount under the said agreement, then it was not open for them to challenge it subsequently. Considering all these aspects, the learned Single Judge dismissed all the writ petitions as misconceived and dishonest and saddled the petitioners with a cost of Rs.1,000/- each. Hence, all these appeals.

5. It was submitted by Mrs. Biniwale that unceremoniously, their services were terminated in 1988 by the G.E.B. without following provisions of law merely on the ground that they were surplus. This was never

argued before the learned Single Judge and in our considered opinion, after their services were terminated in 1988, it would not be proper for this court to consider their challenge regarding illegal termination after a period of almost 17 years and that too, for the first time in these Letters Patent Appeals.

6. Mrs. Biniwale then contended that merely because they accepted the lumpsum amount in lieu of future loss on pension would not dis-entitle them from claiming regular pension as the commuted value of pension was for a period of 12 years and on expiry of the said period in the year 2000, they were entitled to receive regular monthly pension. This submission of Mrs. Biniwale has also no substance. It is clear from the record of the case as well as from the common order passed by the learned Single Judge that in 1988, on declaring them as surplus, they were paid lumpsum amount under the agreement. It is a different matter that at the request of one of the petitioners words “commutation of pension” was included in the Resolution of 1994 but merely because words “commutation of pension” is mentioned in the Resolution of 1994 would not confer any right to the appellants – petitioners to receive regular pension.

7. It was contended by Mrs. Biniwale that it was not a tripartite agreement but a bi-parte agreement between the Corporation and the Union but it is clear from the agreement itself that all the three i.e. Corporation, Board and the Union had agreed.

7.1 Under the circumstances, there is no question of interference by this court in all these Letters Patent Appeals against the common judgment and order passed by the learned Single Judge dismissing all the writ petitions filed by the appellants – petitioners.

8. However, there is lot of substance in the submission made by Mrs. Biniwale that the learned Single Judge committed an error in awarding cost of Rs.1,000/- by holding that all the petitions were not only misconceived but also dishonest. Mr. Pranav Desai who appeared before the learned Single Judge was called by the court and asked as to whether he insists for cost of Rs.1,000/-. Then, he also said that on facts of these cases, he would not like to press for cost which is awarded by the learned Single Judge while dismissing the writ petitions filed by the appellants – petitioners. Hence, the part

of the common judgment and order passed by the learned Single Judge on 3rd August, 2004 dismissing all the writ petitions with cost of Rs.1,000/- which is to be paid to the respondent – Vadodara Municipal Corporation by each of the appellants – petitioners is hereby quashed and set aside. Accordingly, the appeals are partly allowed to the aforesaid extent only on the point of cost. However, the appeals, on merits, are dismissed.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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